IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9897 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

RAJESH @ ANTI @ RAJU SHAMBHUBHAI PARMAR (VANKAR)

Versus

COMMISSIONER OF POLICE

Appearance:

MR ANIL S DAVE for Petitioner

MR KT DAVE, AGP for Respondent nos. 1 to 3

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 28/03/2000

ORAL JUDGEMENT

#. Commissioner of Police, Baroda City, Baroda passed an order on September 11, 1999, in exercise of section 3 (1) of the Gujarat Prevention of Anti-Social Activities Act, 1985 ("PASA Act" for short), detaining the detenue under the provisions of the PASA Act.

#. The grounds of detention indicate that the petitioner has been branded as "dangerous person". The detaining authority considered four offences registered against the detenue and statements of three witnesses, whose identity has not been disclosed by the detaining authority. The authority did not disclose the identity of witnesses in exercise of powers under section 9(2) of the PASA Act after being satisfied that the apprehension shown by the witnesses qua the petitioner is genuine and correct. After considering the less drastic remedies, the detaining authority came to a conclusion that the detention under the PASA is the only efficacious remedy that can be resorted to in order to prevent the petitioner - detenue from pursuing his illegal and anti-social activities.

#. The petitioner - detenue challenges the order of detention on number of grounds. However, Ms. Datta, learned advocate for the petitioner has relied only on the ground of non-supply of relevant document. She submitted that a representation was made by the detenue on December 9, 1999, demanding a copy of a complaint lodged by the detenue against the Police Inspector before the Commissioner of Police. The said representation has been turned down and copies are not supplied. This document was not placed before the detaining authority for consideration while passing the order of detention. Non-supply of documents has affected the right of the detenue of making an effective representation and therefore, the continued detention of the detenue is rendered bad in law and the petition may, therefore, be allowed.

#. Mr. K.T.Dave, learned AGP has opposed this petition.

#. Considering the rival side contentions, it appears that the detenue claims to have filed a complaint against a Police inspector before the Commissioner of Police. Ms. Datta states that the complaint was in respect of false involvement of the petitioner - detenue in cases by the Police Inspector. This complaint was not placed before the detaining authority while the order was passed. Apart from this, it appears that inspite of the representation dated December 9, 1999, copy of that complaint has not been supplied to the detenue. As per the statement made at the bar by Ms. Datta, the representation came to be rejected on December 14, 1999. Thus, non-supply of this complaint has infringed the right of the detenue of making an effective representation. The continued detention of the detenue

therefore, is rendered bad in the eyes of law. The petition therefore, deserves tobe allowed on this ground alone.

#. In view of the above discussion, the petition is allowed. The impugned order of detention dated September 11, 1999 is hereby quashed and set aside. The detenue Rajesh @ anti @ Raju Shambhubhai Parmar (Vankar) is hereby ordered to be set at liberty forthwith, if not required in any other matter. Rule is made absolute with no order as to costs.

[A.L. DAVE, J.]

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